

EXHIBIT 10

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

Adv.Pro.No.

08-01789(SMB)

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

ORIGINAL

-----X

In Re:

BERNARD L. MADOFF,

Debtor.

-----X

IRVING H. PICARD, Trustee for
the Substantively Consolidated
SIPA Liquidation of Bernard L.
Madoff Investment Securities LLC
and Bernard L. Madoff,

Adv.Pro.No.

10-05421(SMB)

Plaintiff,

v.

FRANK J. AVELLINO, et al.,

Defendants.

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Deposition of:

BERNARD L. MADOFF

November 13, 2019

1 DEPOSITION OF BERNARD L. MADOFF, as
2 reported by Nancy C. Bendish, Certified Court
3 Reporter, RMR, CRR and Notary Public of the
4 States of New York and New Jersey, at the BUTNER
5 FEDERAL PRISON MEDICAL FACILITY, Old NC Highway
6 75, Butner, North Carolina, on Wednesday,
7 November 13, 2019, commencing at 9:40 a.m.

8

9 A P P E A R A N C E S:

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SIPA Liquidation of BLMIS and the
Estate of Bernard L. Madoff

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1 (Exhibit D-1 marked for
2 identification.)

3 THE NOTARY: First of all, state
4 your name.

5 MR. MADOFF: Bernard Madoff.

6 THE NOTARY: Do you solemnly state
7 that the evidence you shall give in the issue or
8 matter shall be the truth, the whole truth and
9 nothing but the truth, so help you God?

10 MR. MADOFF: Yes.

11 B E R N A R D L. M A D O F F,

12 having been duly sworn,

13 testifies as follows:

14 EXAMINATION BY MR. WOODFIELD:

15 Q. Mr. Madoff, my name is Gary
16 Woodfield. I know your deposition has been
17 taken a number of times in these various cases.
18 This is another case, so I've got to put you
19 through this again to some degree.

20 I represent Frank Avellino and
21 various family members and entities all in one
22 action that Mr. Picard has brought against Frank
23 Avellino, Michael Bienes, now Michael Bienes's
24 estate, and their various relatives who were
25 involved in this.

1 There was a court order that was
2 entered with regard to this deposition, and I've
3 just marked this as Defendants' 1. You don't
4 necessarily have to read it, I'll just let you
5 know that this is an order that authorized us to
6 conduct your deposition and it has certain
7 restrictions in it that I don't think will be
8 relevant to our examination today.

9 And I know you've been deposed a
10 number of times and I apologize in advance
11 having to go through this again. I'm not going
12 to go into great depth because there's just a
13 certain number of issues I want to cover with
14 you and I realize these are events that took
15 place a long time ago, so you remember what you
16 remember. I mean, do the best you can.

17 A. Okay.

18 Q. Did you state your name on the
19 record?

20 THE REPORTER: Yes, he did.

21 Q. Okay. Mr. Madoff, what I'd like
22 to do is just briefly talk a little bit about
23 the business, and I'll refer to it as BLMIS, but
24 it's, you know, your broker-dealer business,
25 from pretty much inception to 1992, sort of

1 using that time period. So I don't recall
2 exactly what year. Do you recall what year in
3 the '60s you actually started the business?

4 A. Just about the beginning of 1960.

5 Q. And at that time your initial
6 offices were using space in your father-in-law's
7 accounting practice?

8 A. Correct, right.

9 Q. How long were you there, do you
10 recall, approximately?

11 A. I don't really recall. I would
12 say less than a year maybe.

13 Q. And so going from then, '60s up to
14 '92, is a long period of time, did the practice
15 evolve during that period of time as far as --
16 could you describe generally -- I mean, were you
17 doing mostly broker-dealer work or market
18 making, representing retail clients? Can you
19 describe the business and how it changed or grew
20 during that period of time?

21 MS. KOSACK: Objection as to form.

22 Q. You can answer.

23 A. It started out as a small
24 broker-dealer doing retail business with
25 basically family, family members, a handful of

1 family members that were introduced to me by my
2 father-in-law, Saul Alpern, it was his
3 accounting clients, while I was in law school.
4 And then it evolved into market making, doing
5 convertible bond arbitrage primarily.

6 Q. Did you have what I'll refer to as
7 retail clients throughout that period of time?

8 A. Not really. I mean, the retail
9 clients that we had were, my recollection, were
10 basically all family and friends but probably
11 certainly less than a dozen.

12 Q. So if you gave us rough
13 approximations of like the percentage of work
14 that was retail as opposed to proprietary
15 trading or market making, what would you think
16 the percentage would be?

17 A. Market making was the majority
18 because of the activity that market makers go
19 through. They do a lot of buying and selling
20 for their own account primarily and, it, you
21 know, it doesn't pan out to what was that much
22 because you -- hopefully you try and sell what
23 you bought and so on and so forth.

24 Q. What about the -- that's the
25 market-making side of the business?

1 A. Market-making side.

2 Q. What about the proprietary-trading
3 side; were you actively --

4 A. Well --

5 Q. -- trading your own account then?

6 A. -- market making and proprietary
7 trading is the same, is one and the same,
8 because you -- we always trade -- as a market
9 maker you're always trading primarily for your
10 own account. So that's -- it's going into the
11 firm's trading account or investment account and
12 out and that's primarily how all market makers
13 operate.

14 Q. There came a time where there was
15 a unit or at least a characterization in the
16 practice of investment advisory. Do you recall
17 that?

18 A. That was later on, yes.

19 Q. Okay. So do you recall before or
20 after say 1992 did that unit start?

21 A. I don't recall, tell you the
22 truth.

23 Q. Okay.

24 A. I don't recall.

25 Q. And why did you start that unit?

1 A. There was some changes in
2 the industry that required you to -- the SEC
3 wanted market makers to register as
4 investment -- not market makers -- they wanted
5 all broker-dealers to register as investment
6 advisors. Most broker-dealers did not.
7 They preferred to stay not registered
8 because that subjected you to the fraud statute
9 and there was a lot of arguments going on in the
10 industry whether or not it was going to be --
11 whether or not they had the right to force firms
12 to register as investment advisors and so on and
13 so forth.

14 And finally we registered as an
15 'investment advisor with basically -- when the
16 SEC was pushing pretty much everybody to
17 register as investment advisor, and then they
18 changed the rule. They lost a court case at the
19 time, I remember, the SEC, so market makers
20 could withdraw as a Registered Investment
21 Advisor.

22 I had already registered and I
23 wasn't sure whether or not it was -- it was in
24 limbo sort of as to whether or not they were
25 going to still require you to register, so we

1 did. But basically my business never really
2 changed.

3 Q. So were your individual retail
4 clients characterized in the investment advisor
5 unit?

6 A. Some were. Some were and some
7 weren't. Mostly the investment advisory
8 business was hedge funds, European hedge funds
9 that had had -- some of them had a -- again, my
10 recollection was that some of them didn't
11 have a -- some of them had a requirement that
12 they were going to have to register -- they
13 could only deal with a Registered Investment
14 Advisor. That was a small portion of it. I
15 don't know that that ever came to pass.

16 Q. Did it make any difference in your
17 business as to whether a client was
18 characterized as in the investment advisor unit
19 or otherwise?

20 A. No, no.

21 Q. Who did all the trading for all of
22 the clients?

23 A. I did the trading for the
24 proprietary -- well, there was, you know, there
25 was a market-making side, proprietary trading

1 side and the investment advisory side was
2 primarily handled by Frank DiPascali was the one
3 that handled pretty much all of the, I would
4 say, institutional-type clients.

5 Q. When you say handled, was he
6 making the investment decisions for them?

7 A. Well, we made the investment
8 decisions -- it was a combination of who made
9 investment decisions. It could have been market
10 makers, it could have been proprietary traders,
11 it could have been me, and it could have been
12 him, particularly if there were options
13 involved, which was his specialty.

14 Q. You used the term before, let me
15 ask if you -- I really need you to, if you can,
16 give us a brief description of the trading
17 strategy that you used of these arbitrage or
18 convertible bond arbitrage transactions.

19 A. Convertible bond arbitrage is when
20 you buy a -- most companies issued convertible
21 bonds and most convertible bonds are convertible
22 into common stock. You have to physically
23 deliver the bonds to the transfer agent or to a
24 clearing agent and then they will exchange bonds
25 for stock, for common stock.

1 So arbitrageurs primarily, which
2 is called bona fide arbitrage as opposed to risk
3 arbitrage, what they do is basically, typically
4 would either make a market into a convertible
5 bond or go out into the street to buy it. And
6 then when they buy the bond, they simultaneously
7 sell the stock against that position, but they
8 might be short the stock at certain times.

9 As a market maker you're actually
10 required when you're making a two-sided market
11 for a time to trade short, on the short side of
12 the market.

13 Q. I've seen reference to a phrase a
14 premium arbitrage.

15 A. That's --

16 MS. KOSACK: Objection to form.

17 Q. Can you tell us what that is?

18 A. That's when a bond trades at a
19 higher level than it should, based upon the
20 common stock.

21 Q. What kind of returns would you get
22 from these arbitrage trades?

23 A. It varies. Could be -- depending
24 upon how long you stay short, the open common
25 stock, or how long you -- how fast you can

1 physically convert it.

2 Q. Were you able to estimate or
3 project the approximate return you would get on
4 these trades?

5 A. It varies. Typically you would --
6 again, there's no general rule because the
7 longer you stay open, both the long and the
8 short, being long the buy and the short the
9 stock, and not physically converting it into
10 cash so you can make the delivery, that depends
11 upon what your return is.

12 So the goal is to convert it as
13 quickly as possible, unless you think that the
14 stock is going to -- the spreads will change,
15 they'll widen or short. So there's no basically
16 general rule.

17 Q. What about the risk involved in
18 these kinds of trading strategies?

19 A. Well, there's always risk involved
20 because you can be short a bond and long a stock
21 at one price and then the spread, which is the
22 difference between what the conversion is worth
23 and the stock, can wind and it depends upon how
24 long that's going to stay open, and so on. Or
25 it can possibly, there's a rumor about a merger

1 or something happening in the market.

2 Q. Did you do anything in your
3 trading strategy to minimize the risk involved
4 in those kinds of transactions?

5 A. Well, we basically stayed away
6 from huge risk positions, if at all possible.
7 Most arbitrageurs will do that. But there's
8 always a risk involved, no matter how -- all our
9 clients were certainly aware of the fact that
10 there's a risk involved because it's -- you're
11 not only doing bonds where you can immediately
12 convertible. There's also what they call
13 premium arbitrage and so on and so forth. It's,
14 you know, sort of complicated, but it's
15 something that market makers were in a unique
16 position to do that because they don't pay the
17 commissions that would typically be paid by
18 other firms.

19 Q. Throughout the decades, let's say
20 the '70s and '80s, the returns you had for
21 customers was pretty consistent. How were you
22 able to continue to have consistent returns in
23 the market?

24 A. Well, basically the goal is
25 usually, was to do at least double what the

1 bond -- long bond rate would be. So that would
2 be the -- well, because there is a risk
3 involved. So you wouldn't do a trade unless it
4 was immediately convertible and then again it
5 depends upon whether you're doing warrants,
6 rights, units, there's all different forms. And
7 that dictates how quickly you can convert the
8 bond, the warrants, the rights into stock and
9 into a profit.

10 Q. How long did you utilize this
11 arbitrage bond, convertible bond strategy in
12 your practice?

13 A. Basically forever. I mean, except
14 in the later years, I guess we're talking about
15 in the post-'90s, we started a new strategy
16 called the split-strike conversion strategy,
17 which was -- it was not so unique, it was just
18 where you would -- instead of buying one bond
19 and one stock, you would buy either a basket of
20 bonds or a basket of stocks and then you would
21 hedge that with Standard & Poor's indexes. It's
22 called, basically called covered rights.

23 Q. Using the year 1992, were the
24 trades you made as reflected on the statements
25 given to your customers all legitimate trades?

1 A. Yes. Well, some -- our problems
2 occurred in the post-'90s because we found the
3 marketplace was very difficult to do the
4 split-strike conversion. And that strategy
5 involved putting the money into, while you were
6 waiting for the strategy to become available,
7 you would put the money typically in Treasury
8 bonds, waiting for it. But the longer that you
9 waited, the smaller your return would be because
10 you're talking about investing in bonds that had
11 2 percent treasuries, let's say paying 2
12 percent, and you were hoping to earn, you know,
13 let's say 8 or 10 percent and, you know, so you
14 were typically -- you were basically losing that
15 difference.

16 Q. Were you doing split-strike
17 conversion strategies, let's say prior to '92?

18 A. We started doing different blends
19 of it. Well, as a market maker you're always,
20 you're doing some forms of it, you know. But
21 basically it became a typical type of strategy
22 when we were dealing with a group of foreign
23 hedge funds.

24 Q. What about the what I'll refer to
25 as the A&B accounts? Do you know what I'm

1 referring to when I use those initials?

2 A. Yes.

3 Q. What was the trading strategy
4 utilized by your firm with regard to those
5 accounts?

6 A. Well, primarily it was -- the
7 trading strategy from the inception was
8 convertible bonds in common. We were not doing,
9 to my recollection, I don't remember when we
10 started doing, if at all, split-strike trades
11 for them. That's typically more of an
12 institutional type of a trade.

13 So Avellino & Bienes, those
14 accounts were basically initiated originally by
15 my father-in-law, who -- they were his -- he had
16 a group of clients that wanted to do trading
17 convertible bonds, and what we would do is he
18 opened up an account, I think Avellino &
19 Alpern -- Alpern & Heller was the first
20 account -- and we would buy, you know, treat it
21 as an investment club type of an account. And
22 then we would report to them the trades in that
23 particular account and then Saul Alpern and
24 Heller, as their accountants, split the trades
25 up and they would report them, individual

1 trades, like anybody else would, and just charge
2 them a small accounting fee.

3 But as far as we were concerned,
4 we were dealing with one account, but we knew
5 that they were -- a limited number of accounts.
6 You had to have -- you couldn't have more than
7 about a hundred accounts, otherwise, you would
8 have to become registered to do that type of
9 trading.

10 Q. We'll get into, in a bit, when A&B
11 was shut down by the SEC, but up until that
12 point in time, were the transactions that you
13 made on the A&B accounts as reflected in those
14 statements valid transactions?

15 A. Yes.

16 MS. KOSACK: Objection to form.

17 A. Yes.

18 Q. And so the statements that they
19 received showed literally stock -- security
20 transactions that were legitimate?

21 A. No different than any other
22 account, right.

23 Q. There are a few terms that have
24 been utilized. I'd like to ask you about these
25 terms and just give us a brief description of

1 them. For example, like "naked short sales."
2 Just briefly tell us what that means and how it
3 was utilized in your business.

4 A. Naked short means that you're --
5 every short sale is a naked short. In other
6 words, it means that you're selling stock that
7 you don't physically own.

8 As a market maker, that's the
9 typical transaction. You have to -- you're
10 required as a market maker to make a two-sided
11 quote in a group of stocks that you're
12 registered in and then you would trade those
13 stocks, sometimes on the long side, sometimes on
14 the short side, depending upon your feeling of
15 the market conditions and based upon what your
16 client wanted to do.

17 Q. Did BLMIS utilize naked short
18 transactions?

19 A. Who?

20 Q. Did your company?

21 A. Did they do it? Of course, yes.

22 Q. To a large degree?

23 A. Yes.

24 Q. Is there anything improper about
25 naked short transactions?

1 A. Absolutely none.

2 Q. What about the term "continuous
3 net settlement," what did that mean?

4 A. That was basically a clearing
5 operation that was initiated by my firm for the
6 clearing corporation where there was a huge
7 interest in Wall Street to have a central
8 clearing corporation handle the trades the same
9 way that a bank would handle them, and they
10 formed this national clearing corporation and
11 then part of that clearing corporation function
12 was what they called a continuous net
13 settlement, where you would -- market makers and
14 even nonmarket makers would report their buys
15 and sells during the course of the day to the
16 clearinghouse and then what they would do is
17 they would net out all the transactions so that
18 rather than you getting lots of different
19 particular individual trades, you would get one
20 net settlement.

21 So if your net purchases were
22 100,000 shares, even though you may have traded
23 a million shares on that day, if it netted out,
24 the buys and the sells, at different prices --
25 and you never knew who -- you never knew really

1 who you were getting, going to get under the
2 continuous net settlement because it was
3 guaranteed by the clearinghouse.

4 Q. Were all security transactions --

5 A. No.

6 Q. -- done through that?

7 A. No.

8 Q. For instance, over-the-counter
9 transactions, would they be reflected in this --

10 A. Some were; some weren't. It
11 depends upon whether it traded on NASDAQ or
12 whether it was -- depended upon the activity in
13 the stock. A lot of -- some people would
14 internalize the transactions. Internalizing
15 meaning they would net the trades amongst their
16 own retail clients, if they had retail clients,
17 and they would, you know, net them out that way.

18 Q. And so those transactions wouldn't
19 be reflected in any entity that monitors trades?

20 A. No.

21 Q. How much, let's say in the
22 mid-'90s, let's say, just pick a time period,
23 how much trading did your company do that was in
24 transactions that wouldn't be recorded anywhere?

25 MS. KOSACK: Objection, form.

1 Q. Other than internally?

2 MS. KOSACK: Objection, form.

3 A. We were doing 10 percent of all
4 the trading in the United States at one point,
5 so it's an astronomical figure. I don't know
6 how much would be ex-clearinghouse or not.

7 Again, you have to understand that
8 the goal of most firms is to internalize as many
9 transactions as you can, rather than go through
10 the clearinghouse, because you have control of
11 those securities, you have control of the whole
12 operation.

13 But it depends upon who you're
14 dealing with. Madoff dealt with most major
15 brokerage firms like Fidelity and Merrill and
16 Goldman and so on. And those trades typically
17 would be done through the clearinghouse.

18 But again, it depended upon what
19 those firms themselves wanted to do. Sometimes
20 they would want to do the trade ex-clearinghouse
21 because they had customers on both sides of the
22 trade and they wanted to do it that way.

23 Q. So when you use the term "ex-
24 clearinghouse," that's a transaction that
25 wouldn't have gone through this clearing?

1 A. Correct.

2 Q. And so there would be, other than
3 the internal records of your business, there
4 would be no evidence of those trades?

5 A. Correct.

6 Q. Where were those trades recorded
7 within your company?

8 MS. KOSACK: Objection to form.

9 A. They would be on the trading
10 ledgers, depending upon whether it was, again,
11 bought as part of the investment-account
12 inventory or the market-making inventory or in
13 crossing two clients' trades.

14 Q. What about the blotter, what's the
15 blotter?

16 A. Blotter is a general term for,
17 it's a ledger sheet that reports, again, the
18 transactions. It's an internal mechanism for
19 firms to be able to keep track of what they're
20 doing during the day.

21 Q. And did your firm keep track of
22 its transactions on the blotters?

23 A. Yes.

24 Q. How long did it maintain those
25 blotters?

1 A. Well, I think it was a regular
2 retention of six years in the industry. So as a
3 general rule, firms would get rid of the records
4 after six years because they were just so
5 cumbersome.

6 Then there was a change in the
7 industry to make it even shorter because the
8 course of -- the paper course of doing all these
9 transactions was so astronomical that firms came
10 up with their own devices how to record them and
11 may have used, you know, computer systems.

12 Q. Do you recall how long your
13 company maintained the blotters?

14 A. It varied. I mean, typically we
15 would try to not retain them longer than --
16 because it was a matter of space. We had five
17 warehouses full of records. We maintained
18 customer transactions longer than typical
19 because customers, as a general rule, retail
20 customers, would lose their, you know, when it
21 came time to do their tax returns, we would be
22 flooded with, you know, requests for duplicate
23 trades and so on and so forth.

24 Q. How were those maintained?

25 A. If we had the records, we would

1 send them a duplicate. If we didn't, we didn't.

2 Q. Were the records the client
3 statements or some other form of record?

4 A. Basically they would be
5 confirmations.

6 Q. What's a focus report?

7 A. A what?

8 Q. A focus report?

9 A. A focus report is basically a
10 quarterly report that broker-dealers file with
11 the NASD and once a year with the SEC.

12 Q. Did that reflect all of the
13 transactions that were performed by the company?

14 A. Yes.

15 Q. When did you start doing focus
16 reports; do you recall?

17 A. From the inception.

18 Q. So the focus reports would have
19 reflected all transactions made by your
20 business?

21 A. Yes. But again, depending upon
22 whether there were net trades and so on. They
23 would appear, you know, differently. They would
24 appear as a net position as opposed to
25 individual positions.

1 Used to be, when the industry
2 first started, you had to reflect all your
3 inventory in the marked to market and so on, and
4 then that changed, I don't remember what year it
5 was, where they eliminated -- because it was too
6 cumbersome for firms to report the growth
7 positions, so they just reported net positions.

8 Q. What about the term "legging in"?

9 A. Legging in is a term that market
10 makers and basically arbitrageurs use where you
11 buy the bond first and then you sell the stock.
12 Typically -- and that was something that we did
13 regularly. Because the goal would be if the
14 market is going up, you would buy the bond
15 first, wait for the stock to go up, you're
16 selling the stock at a higher price, so you're
17 making a greater profit.

18 And sometimes that works and
19 sometimes it doesn't. You're at risk during --
20 if it doesn't.

21 Q. What about the term "selling
22 against the box"?

23 A. Short against the box?

24 Q. Selling against the box.

25 A. Short against the box.

1 Q. Short against the box.

2 A. Short against the box means that
3 we had stock in one of the firm accounts,
4 inventory account, market-making account, or
5 trading account, and we would be selling stock
6 against that position. It's like being short
7 against a long position.

8 Q. So let's go up to 1992 when you
9 learned about the SEC investigation of A&B. How
10 did that come about?

11 A. It was a nightmare because
12 unbeknownst to me they had, I guess it was Mike
13 Bienes I think was the one that decided that
14 rather than do the trades that we had always
15 been doing them with my father-in-law, he would
16 break up the individual trades and report
17 individually to each client what their tax
18 consequences were.

19 I was told by the SEC, which was
20 sort of a shock to me at the time when they came
21 in to do an examination, that they had come up
22 with a plan where they would issue notes to the
23 customers and pay them an interest rate on
24 borrowing money and they would -- I don't
25 remember how they would report the trade, but

1 basically it was something that they weren't
2 supposed to do or we weren't aware of the fact
3 that they were doing it, and you were limited to
4 how many clients you could have and so on and so
5 forth.

6 Q. Prior to your learning of that SEC
7 investigation, do you recall ever having any
8 conversations with either Frank Avellino or
9 Michael Bienes about the requirement --

10 A. Yeah, it was --

11 Q. -- to register?

12 Remember, just let me finish
13 before you answer. Sorry.

14 A. Yes.

15 Q. What were those conversations?

16 A. Hostile.

17 Q. No, I'm sorry, let me be clearer.

18 Before the SEC investigation,
19 before you learned about that --

20 A. I didn't learn about it until the
21 SEC came in and told me, are you aware of the
22 fact that you have an unregistered hedge fund
23 operating within your firm? I said I had no
24 idea what they were talking about.

25 I always had a very close

1 relationship with the SEC and the regulators
2 because I was on all the boards and I was
3 familiar with all the regulations.

4 And I made it very clear to all my
5 clients what their restrictions were as to how
6 much capital they could invest, how much their
7 net worth had to be, so on and so forth.

8 And we had a very strict rule
9 about investing for, you know, small clients
10 because it was too cumbersome to trade and we
11 weren't sure whether or not they were
12 sophisticated enough to handle the transactions.

13 So when the SEC asked me about
14 this trade, I said I was not aware of the fact.
15 I told them that this was exactly -- this was
16 supposed to be a transaction handled by my
17 father-in-law, how it was supposed to be done
18 and how we thought it was being done for years,
19 and we'd have no way of knowing that it wasn't.

20 But hostile would be the best way
21 I could describe the conversation with both of
22 them, but it was primarily, I guess, Mike's
23 idea, Mike Bienes.

24 MR. WOODFIELD: Mark this as
25 Defendants' 2.

1 (Exhibit D-2 marked for
2 identification.)

3 Q. Mr. Madoff, I'm handing you a
4 document we've marked Exhibit Defendants' 2.
5 This is a letter dated December 9, 1992 to you
6 from Frank Avellino. Will you just take a
7 moment and read it.

8 A. (Witness complies.) Yes.

9 Q. Do you recall receiving this
10 letter?

11 A. I recall getting a phone call. I
12 spoke to the -- I don't remember whether it was
13 after I received the letter or not, I was
14 approached by one of the partners of
15 Pricewaterhouse and told them that, you know, we
16 would take care of that and send it to them.

17 Q. And did you, pursuant to this
18 request, did you cause the statements of A&B to
19 be sent to Pricewaterhouse?

20 A. I wouldn't have done it but
21 someone in my back office would have done it,
22 primarily Frank DiPascali.

23 Q. Other than providing these
24 documents, did you have any other involvement in
25 the SEC's investigation?

1 A. No. Other than the fact that we
2 froze the -- we had actually -- I remember
3 telling the Pricewaterhouse and the SEC that we
4 closed these accounts, and the SEC said, you
5 know, you didn't have to close them, if you
6 didn't want to. They would just have to
7 register. And I said no; I said this was a
8 violation of our internal rules, and I closed
9 the accounts and I sent the money out.

10 So the money was basically, I
11 think, primarily most of it was returned before
12 we even sent the statements out, the duplicate
13 statements out, because there was no reason to
14 hold the accounts open. We weren't going to do
15 business with them any longer.

16 Q. In this litigation Mr. Picard has
17 alleged that the statements that were sent to
18 Pricewaterhouse were recreated by your company
19 to show more conservative trades and to reflect
20 what was alleged to be a shortfall in how much
21 was in those accounts. Is that accurate at all?

22 MS. KOSACK: Objection as to form.

23 A. I would have no way of knowing
24 that because I basically -- once the -- once the
25 relationship ended between Avellino & Bienes and

1 myself, I had nothing to do with the accounts.
2 I wiped my hands of them and turned them over --
3 you know, turned the money back to the clients.

4 And at one point my father-in-law
5 called me up asking me to please don't close
6 certain of these accounts, these people were
7 relying upon the money and they weren't aware of
8 the fact that what they were doing was improper,
9 and so on and so forth.

10 And I said, okay, I said,
11 certainly these accounts, if they're good
12 accounts of yours that you -- and they're
13 sophisticated enough, and I think we had a
14 minimum of \$500,000 for an individual's account
15 to open it up, I said, when you open up an
16 account.

17 But I had nothing to do with it at
18 that stage of the game. I turned it all over to
19 Frank DiPascali because I just didn't want to
20 handle those. I didn't have the time to handle,
21 you know, retail accounts. Because when I
22 handled the A&B accounts, typically there was
23 not any conversation going on because it was an
24 institutional type of account and required no
25 extra work from me or even people in my firm

1 because it was one account, like, you know, an
2 investment account, investment club account.

3 But the thought of having to deal
4 with, you know, all these distant relatives,
5 friends or whatever it is calling up -- I mean,
6 my reputation had always been on Wall Street to
7 not do retail clients type business because most
8 of our -- most of the firms -- not most of, a
9 lot of those firms like Fidelity and those types
10 of firms, they were dealing with retail clients.
11 You know, I didn't think it was right for me to
12 compete with them going into the retail
13 business.

14 Q. So just to be clear, do you have
15 any knowledge that the statements that your
16 company sent to Pricewaterhouse in connection
17 with the SEC's investigation of A&B were in any
18 way modified or changed?

19 MS. KOSACK: Objection.

20 A. I never saw them.

21 Q. So did you have any knowledge of
22 that?

23 A. No.

24 Q. What about with regard to the
25 repayment of the A&B clients that you mentioned

1 before, were there sufficient funds in your
2 company to make those payments?

3 A. If there was sufficient funds in
4 the account, then we would pay them. But if
5 they didn't have -- if we had arbitrage
6 positions set up that were going to be used for
7 those accounts or they weren't out of
8 conversion -- I wanted to get rid of those
9 accounts immediately, I was so furious.

10 So some of these arbitrage
11 positions that we had were not completed yet.
12 They weren't back from the transfer agents and
13 so on.

14 Q. So what did you do with those?

15 A. So we called -- I had other
16 sophisticated clients, a group of I think it was
17 four clients, that we called and said do you
18 want to take over these positions? I'm getting
19 rid of, you know, one of my accounts, and they
20 sent in money and we gave them the positions.

21 Q. I've seen reference to the Big
22 Four, quote unquote. Were those the individuals
23 you approached?

24 A. Yes.

25 Q. Ultimately you permitted Avellino

1 & Bienes to reinvest with your business, did you
2 not?

3 A. No.

4 Q. Did they come back in at all?

5 A. No, not to my knowledge.

6 Q. What about through partnerships
7 that were created that invested with you?

8 A. I was not aware of any.

9 Q. So your recollection is that they
10 had no further investments --

11 A. Yes.

12 Q. -- with you after the SEC
13 investigation?

14 A. That's correct. I thought they
15 couldn't.

16 MR. WOODFIELD: Mark this as --
17 this April 27, 1993 letter as Defendants' 3.

18 (Exhibit D-3 marked for
19 identification.)

20 Q. Take a look at this if you would
21 for a moment. I'll ask you some questions about
22 it.

23 A. (Witness complies.)

24 Q. Just take a quick look at the next
25 couple of pages.

1 A. (Witness complies.)

2 Q. Is this the report, the type of
3 report that you got from the NASD after they
4 conducted audits of your company?

5 A. Yes.

6 Q. Is this, in fact, one of those
7 reports from the audit?

8 A. Yes.

9 Q. If you would just take a look at
10 the description on what is this last paragraph.
11 See where it talks generally about your business
12 and the market making and --

13 MS. KOSACK: What page are you on,
14 I'm sorry?

15 Q. Page 2, it's under the last
16 paragraph on page 2.

17 MS. KOSACK: Just for the record
18 it's the Bates number ending in 112400. That's
19 the page you're on?

20 MR. WOODFIELD: Yes.

21 Q. Is that factually accurate, the
22 first sentence, "As of December 31, 1992" your
23 company, "was making markets in approximately
24 460 securities"?

25 MS. KOSACK: Objection as to form.

1 A. If that's what it says, yeah.

2 Q. Look at the last page if you
3 would, the last paragraph that begins with
4 "December 14, 1992."

5 MS. KOSACK: And for the record,
6 it's the page ending in 112401?

7 MR. WOODFIELD: Correct.

8 A. (Witness examining document.)

9 Okay.

10 Q. Do you understand that at the time
11 the NASD was doing their audit of your business,
12 it was at the same time that this SEC action
13 with A&B was involved --

14 MS. KOSACK: Objection.

15 Q. -- ongoing?

16 MS. KOSACK: Sorry. Objection as
17 to form.

18 Q. Do you have that understanding?

19 A. It looks that way, but I'm not
20 sure of the dates.

21 Q. When this last sentence of that
22 paragraph which states, "The staff's review
23 found no apparent violations on the part of
24 MADF," what did the NASDAQ or NASD's
25 investigation entail? What did they do?

1 A. Typically it was making sure you
2 had enough capital, making sure that your
3 markups on your customer trades was fair and
4 orderly and so on and so forth.

5 I'm not sure that I understand
6 what the A&B -- A&B was an unregistered -- that
7 was in December of '92. When was the
8 examination that the NASD --

9 Q. Well, this letter is dated April
10 27, '93. It's not clear to me when that
11 investigation started, but looks like it was
12 simultaneous.

13 MS. KOSACK: Objection to the
14 form.

15 Q. Do you have any recollection of
16 this particular event?

17 A. Well, I know that when the SEC
18 called about the A&B accounts, they came up with
19 a whole crew of people, their division chief,
20 and did an examination of our firm to make sure
21 that we had all the securities there. And the
22 NASD came up and did a similar, came up and did
23 a follow-up audit.

24 Q. Were all the securities there at
25 the time?

1 A. Yeah.

2 Q. When the A&B customers came in to
3 become your investors directly with you, there
4 were a number of them, were there not?

5 A. When the A&B came in originally?

6 Q. No, no. After A&B was shut down
7 and the investors with A&B --

8 A. Some of them that were
9 originally -- as I said, my father-in-law asked
10 me to take some of these accounts in directly in
11 their own names, and we limited it to family
12 partnerships where we said it could be fathers,
13 you know, sons, daughters, but nothing extended
14 past that.

15 Q. Was any compensation given to
16 Frank Avellino or Michael Bienes for causing
17 those A&B customers to come in to become direct
18 investors with you?

19 MS. KOSACK: Objection as to form.

20 A. Quite frankly, I had -- I think it
21 was well known that my relationship with both of
22 them was sour, and I, quite frankly, refused to
23 see them when they wanted to come up to my
24 office to talk to me.

25 They did come up once. I remember

1 this distinctly because it was I think an Easter
2 parade and both their wives came with them.
3 They were dressed in the most ridiculous outfits
4 I've ever seen in my life, and Mike Bienes at
5 that time was mentally unstable. He started to
6 have a conversation with himself in front of
7 myself and the wives and Frank Avellino. I
8 turned to them and said, what is wrong with him,
9 and they said, no, leave him alone, he's lost
10 it. Whatever that meant.

11 Q. Was that a meeting that took place
12 after the SEC investigation?

13 A. Yes.

14 Q. And do you recall whether or not
15 Frank Avellino and Michael Bienes, through
16 partnerships, were permitted to invest again
17 with you?

18 A. My instructions were to --

19 Q. DiPascali?

20 A. -- Frank DiPascali, was that, no,
21 I don't want any -- it wasn't only for them, by
22 the way. It was we had a strict rule about
23 that, you know, that having partnership accounts
24 that were unsuitable and unregistered, and we
25 went -- I gave instructions to my operations

1 people, which certainly included Frank, to do a
2 search and make sure that all of the accounts
3 that we had, if they had names that looked
4 strange to us, find out exactly, you know, who
5 the owners are and close the accounts if they
6 are not following whatever our requirements
7 were, which was, you know, they said should just
8 be immediate family members.

9 Q. And did Frank DiPascali handle all
10 of those accounts --

11 A. Yes, he did.

12 Q. -- when I say those accounts, the
13 A&B clients that came in after A&B was shut
14 down?

15 A. Yes.

16 Q. Did you have any day-to-day
17 involvement with those accounts?

18 A. I had very little involvement with
19 any of the retail accounts other than the Big
20 Four accounts, which were a totally different
21 type of trading.

22 Q. Who was doing the trading for
23 those A&B clients that came in?

24 A. Well, because depending upon the
25 type of strategy we were using, it would go into

1 a -- it depended upon whether it was coming out
2 of the market-making side of the firm or the
3 investment side of the firm, and it was done in
4 what you would call block size and then we would
5 give instructions to the operations people, and
6 that's back office people, to break up the
7 trades to the individual accounts.

8 Q. So it's clear the investment
9 advisory section did not do trading, correct?

10 MS. KOSACK: Objection as to form.

11 A. Investment advisory section?
12 Well, no, they were not an investment advisory
13 section, all they did was they were registered
14 as an investment advisor but nothing changed,
15 you know, in the handling of the trades.

16 MR. WOODFIELD: Mark this exhibit,
17 which is MF00021568, as Defendants' 4, please.

18 MR. GOLDMAN: If you need to take
19 a break, you ought to tell us.

20 MR. WOODFIELD: Oh, I'm sorry.
21 Yeah, at any time you want to take a break...

22 MR. GOLDMAN: Do you want to start
23 with this?

24 (Exhibit D-4 marked for
25 identification.)

1 BY MR. WOODFIELD:

2 Q. I show you this document I just
3 put in front of you that at the top is entitled
4 "Portfolio Management Report as of 12/31/91." I
5 apologize, it's not all that clear to read, so
6 let me know if you have some trouble. I can
7 help you with some of the reading of it.

8 Well, my first question is what is
9 this document?

10 A. Looks like an account ledger for
11 this client.

12 Q. And is this an internal --

13 A. Yes.

14 Q. -- an internal document of your
15 company?

16 A. Yes.

17 Q. This is not something that would
18 go to a client?

19 A. It depends. Depends on what the
20 clients wanted. We did have some statements
21 that did go to clients that were very similar to
22 this, if not the same.

23 Q. Now, looking at this, I just want
24 to ask you about some of the line items that --
25 if you could explain those to us.

1 So I take it from looking at the
2 top where it has an account number and a
3 specific account and then, quote, Frank J.
4 Avellino Trustee, close quote, that that's one
5 particular account that was at your company?

6 A. Yes.

7 Q. So with regard to these line items
8 below that, you see where it starts with
9 "Initial investment"?

10 A. Um-hum.

11 Q. The next one is "Profits under
12 expected return for previous year." What does
13 that mean?

14 A. Typically what most investment --
15 people that were handling whether advisory
16 accounts or just retail accounts where you were
17 managing their account for them, you know, you
18 would project out what the particular strategy
19 was -- what the goal was. It's not a guarantee.
20 It's strictly a, you know, what we're estimating
21 the trades should produce.

22 Q. The next line under that is
23 "Adjustments." There's no dollar amount
24 connected to that, but what would the
25 adjustments be?

1 A. It depends upon if there were an
2 error in the account, what's known as an as-of
3 transaction. Typically with most, though, when
4 you're dealing with trades like this, you would
5 have errors that are made in the accounts,
6 errors of either the firm or of the client who
7 told you to sell the stock, to unwind the
8 position, and for some reason it wasn't unwound,
9 and we had to go back in after a conversation.
10 It was always one of these things where they
11 would say we'll make it up to you, don't worry,
12 just put the trade through.

13 Q. Go down several more line items,
14 there's a line item "Expected rate of return"
15 and then on that line is 31 percent. What is
16 that?

17 A. Depends upon the type of
18 transaction. I would say it's a more
19 speculative type of transaction than a typical
20 one.

21 Q. Again, how were you able to
22 determine a number such as the 31 percent?

23 A. Based upon where the stock and the
24 bonds were trading at or whatever the units
25 were.

1 Q. And is 31 percent as of 1992 a
2 good return?

3 A. Of course, yeah.

4 Q. Do you know what the general
5 market was at that point in time?

6 A. It's representative in that
7 return.

8 Q. Going down to the bottom of that
9 first client list of terms which we've just
10 discussed, the last one is "Annualized return
11 for current year" and it has 92.98 percent.
12 What is that?

13 A. Well, that -- you have to look
14 at -- I had a conversation like this with
15 Picard's people when they were down here last
16 time, which for some reason, which is always an
17 embarrassment to them, in my feeling, where they
18 would look at a transaction, and just look at
19 the long position or the short position, and
20 determine what the percentage return was of that
21 position.

22 It's totally wrong. I mean, you
23 have to net out the long and the short. So they
24 would come up with some thing, I remember the
25 account was Stanley Chais, they said he had a

1 400 percent return in a particular stock, but if
2 they bothered to read it, they would see that he
3 might have had 392 percent loss in the contra
4 side of that transaction.

5 I said, how can you possibly, you
6 know, ask me that question? What they were
7 trying to do, it seemed to me, was exaggerate,
8 you know, what the profits were, the same way
9 that they went on this tare that they couldn't
10 find any customer confirmations on transactions,
11 so they're assuming that we never did the trade.
12 They couldn't find the, not only customer
13 confirmation, they couldn't find the contra
14 broker side and that's because they weren't
15 issued any longer.

16 Q. This statement as reflected at the
17 top is year end 12/31/91. So were the
18 securities transactions that are reflected on
19 this statement all valid at that point in time?

20 MS. KOSACK: Objection as to form.

21 A. I'm assuming if they're on the
22 statement they were valid. Again, I had no
23 way -- I did not handle all of those
24 transactions, so I don't know.

25 Q. To your knowledge, though, as of

1 12/31/91 was your company still performing
2 transactions in a valid manner?

3 A. It was. There were, I think it
4 was sometime in the post-'90s -- not post-'90s,
5 in the '90s, where we had bigger short positions
6 in stocks that were open longer than we wanted
7 to, which meant that we were long either
8 Treasury bonds or we were not -- we were having
9 difficulty generating the stock.

10 I think I testified in court that
11 I believed that, you know, which would be
12 established as a fraud, was the way we were
13 handling -- my office was handling certain types
14 of transactions post that period.

15 Q. So would it be fair to say you
16 weren't either recording or covering the short
17 transactions?

18 A. It depends, yeah, but you have to
19 understand that there was absolutely nothing
20 wrong with a broker-dealer being short stock.
21 It's an everyday operation for all
22 broker-dealers, whether it be Merrill Lynch,
23 Goldman Sachs, or Madoff, to have a long
24 position and short position and have an open
25 short position. If we thought the market was

1 going to go lower, then we would typically keep
2 a long position open -- short position open
3 longer. Sometimes it worked out; sometimes it
4 didn't.

5 But it got to the point where I
6 was under a lot of pressure from the foreign
7 hedge funds that we were dealing the
8 split-strike trades with to do trading, and that
9 was my downfall. It was a mistake. I should
10 have returned their funds and closed the
11 accounts. But I had made a commitment when I
12 took the accounts on to not return the money
13 because these hedge funds were known as hot
14 money hedge funds. They were all foreign hedge
15 funds and as soon as you have a -- if you had a
16 bad period of time where you weren't doing the
17 trading at the level that they were hoping for,
18 they would close the account.

19 So we made a commitment that we
20 would not close the account and they also made a
21 commitment that they would stay the course.

22 MR. WOODFIELD: Mark this as the
23 next exhibit. This is MF00456622.

24 (Exhibit D-5 marked for
25 identification.)

1 Q. I put this in front of you,
2 Mr. Madoff. If you could take a look at it and
3 then tell us what this document is and what it
4 represents.

5 A. I can hardly see it. I can hardly
6 read it but it looks like just open positions.

7 Q. Is this an internal record of your
8 company?

9 A. Yes.

10 Q. And is this the type of record you
11 generally maintained?

12 A. Yes.

13 Q. And, again, what does it reflect?

14 A. It's a typical statement, broker
15 statement of transactions.

16 Q. What about with regard to the
17 categories when it refers to longs and shorts?

18 A. Longs and shorts means you were
19 long in stock and short in stock.

20 Q. Were these kind of reports
21 generated monthly or weekly or daily; do you
22 know?

23 A. Monthly typically. Sometimes
24 quarterly. Depends.

25 Q. And were these statements provided

1 to the customers or just for your internal
2 business?

3 A. No, they were to the customers.

4 Q. And in this particular document
5 with this account titled "Avellino & Bienes,"
6 were these transactions, for example, the top
7 part where it lists all of these long
8 transactions, is there a counter to those
9 transactions? Would there be shorts?

10 A. Sometimes. It depends upon --
11 you'd have to look at the individual transaction
12 to see whether or not one is convertible into
13 the other.

14 Q. Okay. What about the lower
15 section here where, again, it lists a number of
16 companies with dollar amounts on them?

17 A. I don't --

18 Q. Like the Advanced Micro Devices,
19 that whole column below there, what does that
20 represent or what do they represent?

21 A. Those are long positions that the
22 account was long in.

23 MR. WOODFIELD: Mark this
24 document, which is STR0000216, the next exhibit.

25 (Exhibit D-6 marked for

1 identification.)

2 Q. Mr. Madoff, I hand you this
3 account statement of your company for a
4 Strattham, a client, dated 1/31/08 and ask you
5 is that the typical type of statement that your
6 company generated and provided to its customers?

7 A. 2008 you said, is that what
8 that --

9 Q. Yes.

10 A. Yeah.

11 Q. Now, if you look at this, would
12 you be able to tell me what kind of investment
13 strategy was being exercised based upon the
14 transactions in that statement?

15 A. Yes.

16 Q. Could you do so.

17 A. It looks like a lot of movement in
18 and out of the market and into Treasury bonds
19 and so on. I couldn't tell what -- without
20 going into great detail, what the strategy was.

21 Q. If you would, turn to the very
22 last page of this document, which is STR000225.

23 A. Um-hum.

24 Q. Could you tell us what that page
25 represents.

1 A. This is split-strike transactions.

2 Q. And how are you able to determine
3 that?

4 A. The S&P 100 Index that is short,
5 and there must be typically -- typically there
6 would be, on the other side, a long portfolio of
7 stocks.

8 Q. Further down on this page I see a
9 long position with a dollar amount and a short
10 position with a dollar amount. Is that the long
11 position you just referred to?

12 A. Right.

13 Q. Now, could you explain to me what
14 these puts and calls are and what you're doing
15 with these transactions?

16 A. Typically what happens is the
17 strategy that we get, we were using, which was
18 not an uncommon strategy, where you were long a
19 basket of securities that represented the S&P
20 movement in the S&P 100 or 500, depending upon
21 what we were using, and you would be short
22 the -- short normally the puts or short calls
23 and so on.

24 Q. Would the monthly statements for
25 this account going forward show how those puts

1 and calls were implemented?

2 A. Typically.

3 Q. Now, in looking at this statement,
4 this statement is dated January 31, 2008, your
5 business wasn't doing these transactions at this
6 point in time, was it?

7 A. We were doing some of them; some
8 of them we weren't.

9 Q. But is there anything on the face
10 of this statement that would cause the customer
11 who received it any concerns about the validity
12 of the transactions?

13 MS. KOSACK: Objection.

14 A. No. I mean, it depends upon
15 whether -- what the transaction was and --
16 again, depends upon the type of trading that we
17 did. Typically we would not do very big risk
18 trades. But there were some transactions that
19 could have been done with the customer
20 requesting, having a position in the market,
21 view of the market, or that, you know -- again,
22 I didn't handle these transactions during that
23 period of time so...

24 Q. Who did?

25 A. Frank --

1 Q. DiPascali?

2 A. -- DiPascali, yeah.

3 Q. Again, looking at this last page,
4 could you explain to me what these transactions
5 are? For example, the first item looks like the
6 S&P Index 100, February 2 -- 610 call. What
7 exactly are you doing there?

8 A. You're short the calls, the S&P
9 100 calls. And typically you would have either
10 underlying -- you'd have underlying positions in
11 the puts or underlying positions in the stocks,
12 or sometimes -- I can't tell. I mean, Frank
13 could have put on a riskier position than
14 typical.

15 Again, depending upon whether he
16 was getting instructions from a customer, which
17 is unlikely because typically we would not pay
18 attention to what a customer asked us to do, or
19 that he was -- he became aggressive at some
20 point in time in trading.

21 Q. Were these puts and calls
22 protecting the investments from risk?

23 A. Some of them were, yeah.

24 Q. How is that possible? How does
25 that work?

1 A. Because if you were long -- if you
2 were short the calls, you would have a contra
3 long position on the side in either one of the
4 indexes or not. It's hard to tell. I mean,
5 there's all sorts of different trading that it
6 involved, big risk or no risk or limited risk.

7 Q. But by having these puts and
8 calls, did it result in a more consistent return
9 on the investments?

10 A. A more consistent return? No.
11 Well, it depends upon whether or not you did
12 what we considered -- we had a strategy that
13 involved a basket of anywhere from 35 to 50
14 securities, and that had a 90 percent
15 correlation to the index. That would be a
16 limited risk, no different than if you were
17 doing a convertible bond.

18 But if you just went out and had a
19 position on it in the eve of the index or in the
20 shortness of the stock, you'd be taking greater
21 risk.

22 Q. So when you say -- you used the
23 term 90. Is that protecting -- if the
24 investment fell below 90 percent, you're
25 protected up to 90 -- that 10 percent? Is that

1 what you're saying?

2 I don't understand; I'm not sure I
3 understand. How are you protecting the risk in
4 a transaction like that?

5 MS. KOSACK: Objection.

6 A. You're either long the stock or
7 you're long a related, you know, option. You
8 can't tell that from just looking at this now.

9 Q. Other than the one meeting you
10 mentioned you had with Frank Avellino and
11 Michael Bienes and their wives, I guess that was
12 after the 1992 --

13 A. Correct.

14 Q. -- do you recall any other
15 meetings with them?

16 A. No. I remember running into Mike
17 Bienes and his wife in London. I was having
18 lunch with some of my partners in my London firm
19 and I heard somebody screaming out my name as I
20 walked into the restaurant and it was Mike
21 Bienes.

22 You know, he came over to my
23 table. I introduced him to my partners. They
24 all looked at me and said who is that guy? I
25 said, you don't want to know.

1 Q. What about prior to the A&B SEC
2 investigation, did you have -- let's say in the
3 '70s and '80s, right, prior to 1992, what was
4 your relationship with Frank and Michael?

5 A. Well, I don't know when Michael
6 went to the firm. He went to the firm after my
7 father-in-law retired. And with Frank I had
8 very little relationship with him because I was
9 doing -- my relationship was strictly with my
10 father-in-law, and I had a very limited
11 relationship with him, I mean, a relationship
12 other --

13 Q. Business.

14 A. -- than as a father-in-law.

15 But, you know, we put trades on
16 ourselves. These were all, you know,
17 discretionary accounts or limited discretionary
18 accounts, so we didn't have to -- we weren't
19 going to go -- we didn't have the time to go and
20 speak to my father-in-law, certainly not his
21 customers, I didn't even know who they were,
22 when we did our buying and selling.

23 Q. Let's say after your father-in-law
24 was no longer involved in it, was Frank Avellino
25 and Michael Bienes, let's say in the '80s, how

1 often would you communicate with them?

2 A. Very little.

3 Q. Did you have any social
4 relationship with them?

5 A. No.

6 Q. Did they have any access to you
7 different than anyone else -- I'm sorry, strike
8 that.

9 Did they have the ability to -- or
10 a relationship with you different from any other
11 customers or clients?

12 A. No. I didn't have any with them.

13 Q. At any time in your dealings with
14 them, did you have any awareness that they had
15 any understanding as to the fraud that your
16 company was doing?

17 A. No.

18 Q. Did they have any involvement in
19 it at all?

20 A. Nothing that they did with me
21 because I didn't do any trades with them. In
22 other words, they were doing their trading with
23 Frank DiPascali, so they would have nothing to
24 do with me. They had no conversations with me.

25 Q. Did Frank DiPascali ever tell you

1 that Frank Avellino or Michael Bienes had
2 knowledge of the wrongdoing?

3 MS. KOSACK: Objection.

4 A. No, because he would be putting
5 his job in jeopardy if I knew he was handling
6 those accounts.

7 Q. Now, of all your employees, was
8 there anyone other than Frank DiPascali who knew
9 when the fraud was ongoing?

10 A. Not really.

11 Q. Was there anyone else who was
12 involved in it? Not knowingly involved.

13 A. No. Basically the other people in
14 the firm, as I made very clear, were basically
15 bookkeepers and were following the instructions
16 of either the client -- we had some clients like
17 the Big Four clients who would constantly call
18 and give them instructions as to what they
19 wanted to buy and sell for tax purposes and so
20 on. But basically, no.

21 Q. Were the transactions that you did
22 for the Big Four, were they improper?

23 A. No. There were transactions that
24 occurred between the Big Four and myself that
25 happened in the '90s where the -- they wanted to

1 unwind positions that I didn't want them to
2 unwind because we had commitments with foreign
3 clients.

4 Q. You mentioned that. What I'm
5 thinking -- I didn't mean to go into that. I
6 meant what about just back-dating on
7 transactions for the Big Four for tax purposes?

8 A. Well, I went into this with the
9 SEC at the time, I recall. When you're doing
10 the type of trading that we did for clients like
11 the Big Four, it was not uncommon to have a
12 dispute as to when they gave instructions to
13 liquidate a position or not.

14 And we had made it clear when we
15 put these transactions on, they were basically
16 long positions and short positions. These were
17 not necessarily arbitrage positions, but they
18 were hedged positions, and there were foreign
19 customers on the other side.

20 And we made it clear that they had
21 to keep the positions open and not unwind the
22 positions prematurely because that disrupted the
23 trades on the contra side of the transaction.

24 That being said, some of the Big
25 Four, primarily two clients, kept on pressing

1 us. They were worried about the market going
2 down and them giving up the long position
3 profit. And they, against my wishes and my
4 instructions, they wanted to sell the stock, and
5 I had no way that I could prevent them from
6 selling the stock.

7 So they called up back office
8 people, primarily I think it would be Annette,
9 she was our head bookkeeper, and tell her to
10 sell the stock and position. And there were
11 disputes between the customer and myself as to
12 whether or not the trade should have been done.

13 And they back-dated the trade
14 because they claimed that they gave instructions
15 to sell the stock, and I said, no, you didn't
16 give instructions. I said you wanted to sell
17 the stock but we told you you can't sell the
18 stock.

19 And then we had these what they
20 called hold harmless agreements between the
21 customer and myself where they would be
22 responsible for any loss that we took by closing
23 the trade prematurely.

24 Q. Frank DiPascali testified that the
25 fraud began back in the 1970s. Is that

1 accurate?

2 A. No.

3 Q. Was he involved in trading at all,
4 let's say prior to 1992?

5 A. No. Not really. He worked in the
6 research department in the trading department,
7 but certainly he never did any transactions for
8 the firm back in those days.

9 Q. What about Joanne Crupi; what was
10 her job responsibility?

11 A. She was a bookkeeper.

12 Q. Did she have any knowledge or
13 involvement in wrongdoing?

14 A. No.

15 Q. What about Irwin Lipkin; what was
16 his job?

17 A. He was a cashier. He was with the
18 firm for a lot of years, before that his wife
19 was a bookkeeper with the firm, and he was
20 just -- basically handled the financial reports
21 up to a certain point and so on and so forth.
22 He wasn't the brightest light in the world and
23 made a lot of errors, which is why we got rid of
24 him.

25 Q. What about David Kugel; what did

1 he do?

2 A. David Kugel was a market maker in
3 convertible bonds for the firm.

4 Q. Are you aware that he's testified
5 that, again, with regard to the arbitrage trades
6 in the '70s, those trades were not being
7 implemented; is that accurate?

8 A. No. Because what happened was at
9 the meeting that I had with the depositions
10 with --

11 MR. GOLDMAN: Don't --

12 A. What's his name?

13 Q. David?

14 A. David, your partner. What's his
15 name?

16 MS. KOSACK: David Sheehan?

17 MR. GOLDMAN: David Sheehan.

18 THE WITNESS: David who?

19 MR. GOLDMAN: Sheehan.

20 THE WITNESS: Sheehan, right.

21 A. They produced a smoking gun, a
22 scrap of paper that showed what a -- that had
23 conversion ratio. It was a handwritten scrap of
24 paper, there were probably a hundred of them in
25 the firm, I guess, over the years, by David

1 Kugel, and it could have been by other than
2 traders, that explained to the back office
3 clerks how you convert one bond into -- how
4 much -- what the conversion ratio was.

5 And it just tells them so that the
6 clerk would know that, that for every bond that
7 we were going to sell the customer, he would be
8 short in a certain amount of stock.

9 They would then search the trading
10 ledgers or the investment ledger to get the time
11 that we were trading those particular stocks and
12 put the transaction through.

13 It was a typical everyday
14 transaction that went on between market makers
15 and proprietary traders and back office
16 operations all over Wall Street.

17 MR. WOODFIELD: I have nothing
18 further.

19 THE WITNESS: You have what?

20 MR. WOODFIELD: I have no further
21 questions, thank you. I don't want you to miss
22 lunch.

23 MR. GOLDMAN: Don't worry.

24 MS. KOSACK: We'll take a break
25 and then reconvene and figure out where we are.

1 MR. WOODFIELD: Sure.

2 (Recess taken 11:07-11:25 a.m.)

3 - - -

4 EXAMINATION BY MS. KOSACK:

5 Q. Good morning, Mr. Madoff.

6 A. Good morning.

7 Q. My name is Melissa Kosack and
8 along with my colleague, Ms. Stacey Bell, we
9 represent the Trustee Irving Picard in the
10 action against the Avellino and Bienes
11 defendants.

12 I just have a few follow-up
13 questions here today. Before I began I would
14 just like to remind you that you are still under
15 oath and your obligation to answer my questions
16 truthfully still applies. Is that clear?

17 A. Yup.

18 Q. You testified earlier to some
19 questions that Mr. Woodfield posed to you about
20 trade blotters and how they were part of the
21 records at BLMIS. Do you recall that testimony?

22 A. Yes.

23 Q. Did you also prepare trade
24 blotters at BLMIS during the time period in
25 which you did not execute trades for your

1 investment advisory business customers?

2 A. Yes.

3 Q. Did you also prepare customer
4 statements during the time period for which you
5 did not execute trades for your investment
6 advisory business customers?

7 A. Yes.

8 Q. Now, you also testified earlier to
9 some questions from Mr. Woodfield that you
10 had --

11 A. Well, let me correct you. I
12 didn't prepare them. They were prepared by my
13 office, but it was my responsibility. That's a
14 back office function. Sometimes I knew what was
15 going on, sometimes I didn't, but it was
16 certainly my responsibility.

17 Q. So if you didn't prepare those
18 customer statements, someone else at BLMIS --

19 A. Yes.

20 Q. -- did prepare customer statements
21 during that time; is that right?

22 A. Yes.

23 Q. I just want to ask you in response
24 to some questions Mr. Woodfield had posed to
25 you, you testified that you had a professional

1 relationship with Mr. Frank Avellino. Do you
2 recall that?

3 A. A professional relationship?

4 MR. WOODFIELD: Object to the term
5 "professional."

6 THE WITNESS: What?

7 MR. WOODFIELD: I object. You can
8 answer.

9 A. No, I never had a professional
10 relationship. I mean, he was a client.

11 Q. Were you also friends with
12 Mr. Frank Avellino?

13 A. Not really, no.

14 MS. KOSACK: I'd like to mark as
15 Trustee's Exhibit 19 a document with Bates
16 number KRASS00000009, and the last Bates number
17 of that document is KRASS00000024.

18 I'd like to note for the record
19 that there are gaps in the Bates numbers of this
20 document. That is based on the redaction
21 efforts of the defendants when they produced the
22 document to us. This exhibit contains all of
23 the pages that the defendants produced to us.

24 (Exhibit Trustee-19 marked for
25 identification.)

1 BY MS. KOSACK:

2 Q. Mr. Madoff, I'm handing you
3 Trustee's Exhibit 19. Why don't you take a
4 minute to review that document.

5 A. What's this say?

6 Q. And while you're reviewing that --

7 A. Oh, last will and testament.

8 Q. -- yes, I'd like to note for the
9 record that the full title of the document is
10 the "Last Will and Testament of Frank J.
11 Avellino."

12 A. Okay.

13 Q. Mr. Madoff, do you recognize this
14 document?

15 A. No.

16 Q. Have you ever seen this document
17 before?

18 A. No.

19 Q. I'd like to direct your attention
20 to the first page of the document ending in
21 Bates number 9. Do you see that the title is
22 the "Last Will and Testament of Frank J.
23 Avellino"?

24 A. Yes.

25 Q. I'd like to direct your attention

1 to the second-to-last page of the document
2 ending in Bates number KRASS000000023.

3 A. The last page?

4 Q. The second-to-last page ending in
5 23.

6 A. Yeah.

7 Q. Do you see that on that page this
8 Last Will and Testament of Frank J. Avellino is
9 dated August 14th, 1980?

10 A. Um-hum.

11 Q. Okay. I would now like to direct
12 your attention to the page with Bates number
13 ending in 17. It's the second page of the
14 packet, on the double-sided side, and it ends in
15 17.

16 A. Okay. Are you talking about this?
17 (Indicating.) Even with my glasses I can't see.

18 Q. That page (indicating).

19 Do you see that that page after
20 the first paragraph is titled "Article VII,
21 Executors and Trustees"?

22 A. Right.

23 Q. Do you see in that section at the
24 letter A that this article starts out by
25 appointing you as one of the executors and

1 trustees under Mr. Avellino's will?

2 A. Right, um-hum.

3 Q. Do you also see that this document
4 refers to you as, quote, my friend Bernard
5 Madoff, unquote?

6 A. A lot of my clients would put me
7 as executor of their estates and describe me as
8 friend. Some of them that were -- I had no
9 problem doing that. They looked at it as being
10 an honor.

11 Q. But this document does refer to
12 you as Mr. Avellino's friend?

13 A. I would dispute the fact we were
14 friends. I mean, we had a relationship. He
15 worked for my father-in-law. That was it.

16 Q. Did you know that you were the
17 executor and trustee under Mr. Avellino's will?

18 A. I have no idea whether or not --
19 my guess would be that I assume that he would
20 ask me that. Typically clients would ask me if
21 I have any problem being executor of an estate
22 and I would say no.

23 Q. Now, Mr. Madoff, did you meet with
24 Gary Woodfield in preparation of this
25 deposition?

1 A. Who?

2 Q. Did you meet with Mr. Woodfield
3 who was asking the questions earlier today?

4 A. No.

5 Q. Did you meet with your lawyer in
6 preparation for this deposition?

7 A. No.

8 Q. Do you know if Mr. Woodfield
9 provided any of the exhibits that were shown to
10 you here today to your lawyer in advance of this
11 deposition?

12 A. No.

13 MS. KOSACK: No further questions.
14 Sorry -- one.

15 Q. Mr. Madoff, have you spoken with
16 Mr. Avellino in advance of this deposition?

17 A. No.

18 Q. When was the last time you spoke
19 to Mr. Avellino?

20 A. I wasn't sure whether he was
21 alive. I don't know. Years ago.

22 MS. KOSACK: No further questions.

23 A. I think it was the one time I
24 mentioned that he came up to the office during
25 the Easter parade, whatever. I don't remember

1 how many years ago that was.

2 MS. KOSACK: Thank you.

3 MR. WOODFIELD: I have nothing
4 further. Thanks.

5 (Deposition concluded 11:33 a.m.)

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1 ERRATA SHEET

2 WITNESS NAME: BERNARD L. MADOFF

3 PAGE/LINE CHANGE REASON

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1 JURAT

2 I, BERNARD L. MADOFF, have read
3 the foregoing deposition and hereby affix my
4 signature that same is true and correct, except
5 as noted above.

6 BERNARD L. MADOFF

7 THE STATE OF _____

8 COUNTY OF _____

9
10 Before me, _____, on this
11 day personally appeared _____,
12 known to me (or proved to me on the oath of or
13 through _____ (description of identity
14 card or other document) to be the person whose
15 name is subscribed to the foregoing instrument
16 and acknowledged to me that he/she executed the
17 same for the purpose and consideration therein
18 expressed.

19 Given under my hand and seal of office on
20 this _____ day of _____, _____.

21

22

23 NOTARY PUBLIC IN AND FOR
24 THE STATE OF _____

25

My Commission Expires: _____.

1 REPORTER'S CERTIFICATION

2
3 I, NANCY C. BENDISH, Certified
4 Court Reporter and Notary Public of the States
5 of New York and New Jersey, do hereby certify
6 that, prior to the commencement of the
7 aforementioned examination, BERNARD L. MADOFF
8 was sworn by a North Carolina Notary to testify
9 the truth, the whole truth and nothing but the
10 truth.

11 I DO FURTHER CERTIFY that the
12 foregoing is a true and accurate transcript of
13 the testimony as taken stenographically by and
14 before me at the time, place, and on the date
15 hereinbefore set forth.

16 I DO FURTHER CERTIFY that I am
17 neither a relative nor employee nor attorney nor
18 counsel of any party in this action and that I
19 am neither a relative nor employee of such
20 attorney or counsel, and that I am not
21 financially interested in the event or outcome
22 of this action.



23 NANCY C. BENDISH, CCR, RMR, CRR
24 Realtime Systems Administrator
Certificate No. XI00836

25 Dated: November 14, 2019

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